

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9301 of 2001

with

CIVIL APPLICATION NO. 1476 OF 2002 IN  
SPECIAL CIVIL APPLICATION NO. 9301 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : YES  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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G E B

Versus

HITENDRA CHHITUBHAI PATEL  
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Appearance:

1. Special Civil Application No. 9301 of 2001  
MR NK MAJMUDAR for Petitioners No. 1-3  
MR AK CLERK for Respondent No. 1  
RULE SERVED BY DS for Respondents No. 1,2
2. CIVIL APPLICATION NO. 1476 OF 2002  
Mr. A.K. Clerk for the applicant original resp.no.1.  
Mr. N.K. Majmudar for the opponent original  
petitioner  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/03/2002

## ORAL JUDGEMENT

Heard learned advocate Mr. Majmudar for the petitioner and Mr. A.K. Clerk for respondent No.1. Notice of rule issued by this Court has been served upon the respondent No.2 but the respondent No. 2 has not remained present before this Court either in person or through any advocate. Therefore, the matter has been taken up for hearing in absence of the respondent No.2.

By way of this petition, the petitioner has challenged the order passed by the labour court concerned below Exh. 49 dated 29.3.2001 wherein the labour court has rejected the prayer made by the petitioner Board to stay further proceedings of the reference on the ground of pendency of cognate matter being special civil application no. 5644 of 1997 before this Court wherein recovery orders passed by the labour court have been stayed by this court.

Learned advocate Mr. Majmudar has submitted that the present respondent workman was working in the Gram Panchayat and he was not employed by the petitioner Board; he was engaged by the Gram Panchayat and has also been paid by the Gram Panchayat. According to him, the petitioner Board has only limited role in the present case to provide the Transformer to the Panchayat and, thereafter, internal arrangement of connection etc. is required to be carried out by the Gram Panchayat. He has submitted that some assistance is being provided by the petitioner Board to the Gram Panchayat. He has submitted that the respondent workman has filed recovery application no. 605 of 1994 against the Board claiming regular salary which was paid to the Helper of the Gujarat Electricity Board and that has been allowed by the labour court concerned on 11th June, 1997. He has submitted that the said order dated 11th June, 1997 has been challenged by the petitioner before this Court by filing aforesaid petition and this Court (Coram : M.R.Callal, J.) has passed order on 12th August, 1997 and has issued rule returnable on 1st September, 1997 and meanwhile, operation of the order passed in the recovery application by the labour court has been stayed by this Court. In view of these facts, learned advocate Mr. Majmudar has submitted that the very question has been examined by the labour court once in the recovery application and has come to the conclusion that the respondent workman was the employee of the petitioner Board and on that basis, recovery application has been allowed and, therefore, the labour court ought to have stayed the further proceedings in the reference and for

that, initially, the petitioner Board had filed application at Exh.44 which was rejected by the labour court in view of the fact that the petitioner Board had not produced copy of this order and the copy of the memo of aforesaid petition. Thereafter, second application at Exh. 49 was filed by the petitioner board before the labour court on 29th March, 2001 page 20 of the petition. He submitted that the said application was examined by the labour court as a preliminary issue and ultimately, the labour court has rejected the said application with cost of Rs. 500.00 and, therefore, learned advocate Mr. Majmudar has submitted that the prayer made by the petitioner before the labour court for stay of proceedings of the reference was reasonable and in order to avoid multiplicity of proceedings between the parties, said application ought to have been allowed by the labour court. According to him, in view of the pendency of the aforesaid petition before this Court, the labour court ought to have waited till the aforesaid petition is finally heard and decided by this Court. On the basis of the aforesaid submissions, he has submitted that the order of the labour court is erroneous and liable to be set aside.

As against that, learned advocate Mr. Clerk appearing for the respondent workman has submitted that the services of the respondent workman were terminated on 1st June, 1996 and the reference arising out of the said termination order is pending before the labour court being reference No. 269 of 1997. He has submitted that the petitioner is challenging the order below Exh. 49 which is an interlocutory order passed by the labour court and, therefore, petition should not be entertained by this Court. He has further submitted that after the evidence of the respondent workman has become over before the labour court, the petitioner has submitted application for staying proceedings of the reference. He has submitted that the labour court has considered that earlier, similar application Exh. 44 was preferred by the petitioner which was rejected by the labour court and subsequent thereto, the petitioner moved another application for the same prayer of stay of proceedings of the reference and it amounts to adopting delay tactics and, therefore, according to him, labour court is right in rejecting the application Exh. 49; labour court is right in examining the matter and no error has been committed by the labour court in rejecting the application Exh. 49 and, therefore, the interlocutory order of the labour court is quite just, valid and proper order which would require no interference of this Court in exercise of the powers under Article 226 and/or 227 of

the Constitution of India. He has relied upon the decision of the apex court in case of D.P. Maheshwari versus Delhi Administration reported in AIR 1984 SC page 153 and has submitted that in the said decision, the apex court has observed that the tribunals entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in disputes at the same time without trying some of them as preliminary issues. Nor should High courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of the Supreme Court under Article 137 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workman in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other woeful consequences.

He has also relied upon the another decision of the apex court in case of National Council for Cement and Building Materials versus State of Haryana, reported in 1996-30SCC page 206 and has submitted that in the said decision, the apex court has, considering the decision in case of D.P. Maheshwari versus Delhi Administration (supra), held that; in D.P. Maheshwari versus Delhi Administration, this Court speaking through O. Chinappa Reddy, J. observed that the policy to decide the preliminary issue required a reversal in view of the unhealthy practices resorted to for unlucky forum and simple procedure were devised with avowed object of keeping them from the dilatory practices of civil court. The Court observed that all issues whether preliminary or otherwise, should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. To the same affect is the decision in Workmen versus Hindustan Lever Ltd.

He has also relied upon the decision of this court in case of Shree Ram Mills Ltd. versus Jagjivanbhai Ranchhodji Ahir reported in 1987 (2) GLH (UJ) page 14 wherein this Court has observed that; it is therefore obvious that the procedure and practice of

framing such preliminary issues by the labour court in pending disputes between the employers and employees and holding up those proceedings by filing petitions under Article 226 in the High Court have been deprecated by the Supreme Court. Under these circumstances, the interest of justice will be served, even belatedly if we refuse to interfere with the aforesaid interim order passed by the Presiding Officer, Labour Court, Surat and do not express any opinion on the finding reached by the Presiding Officer, Labour Court on the preliminary issue as to whether the respondent No.1 herein was a workman or not at the time when his services were terminated.

Relying upon the aforesaid decisions of the apex court and of this court, he has submitted that the labour court has not committed any error in rejecting the application Exh. 49 submitted by the petitioner Board. According to him, for coming to such conclusion, the labour court has assigned cogent reasons and it has applied its mind and has rightly held that it amounts to adopting delay tactics for delaying the reference involving the termination of the year 1996. He has submitted that the said special civil application no. 5644 of 1997 has been filed by the petitioner in the year 1997 wherein the order has been passed by this Court on 12th August, 1997. According to him, the proceedings are pending before the labour court since the year 1997 and in spite of that fact, the petitioner has chosen to file the application for stay of further proceedings only in the year 2001 and it would mean that the petitioner wants nothing but to delay the proceedings of reference before the labour court. He has submitted that the petitioner Board was aware of this situation and was also aware of the orders passed by this Court in the year 1997 and was not prevented to file such application immediately after 12th August, 1997 when orders were passed by this Court in the aforesaid petition challenging orders passed by the labour court in the recovery proceedings and, therefore, it is really not bona fide application on the part of the petitioner but an attempt has been made by the petitioner to delay the proceedings of reference before the labour court after the evidence of the workman has been completed. He has also submitted that the case of the Board is that the respondent workman is not its employee but the workman is disputing this contention. He has emphasized the submission that the respondent workman is in reality, an employee of the petitioner Gujarat Electricity Board. In view of the aforesaid submissions, according to Mr. Clerk, there is no substance in this petition challenging interlocutory order made by the labour court and, therefore, same is

required to be rejected.

I have considered the submissions made by the learned advocates for the parties. I have also perused the order in question made by the labour court. First of all, it is required to be noted that in special civil application no. 5644 of 1997, the petitioner is challenging the orders passed by the labour court in recovery applications wherein this Court has passed the orders on 12th August, 1997 whereas the petitioner has moved the application on 29th March, 2001 after the evidence of the workman was over before the labour court and, therefore, apparently, it is an application moved by the petitioner only with a view to delay the proceedings of the reference before the labour court. This aspect has been examined by the apex court and by this court in aforesaid decisions relied upon by Mr. Clerk. I have also perused the order below Exh. 49. I have also considered the reasons assigned by the labour court for rejecting the application Exh. 49. According to my opinion, the labour court was right in observing that the application has not been moved by the petitioner in time or immediately after the orders were made by this court in aforesaid petition and, therefore, the labour court was right in observing that there is no bona fide in moving such an application by the petitioner. The labour court was right in holding that after rejection of the application Exh. 44 for stay of proceedings of the reference, second application Exh. 49 for the similar prayer cannot be entertained and, therefore, the labour court has rightly observed that instead of producing the evidence by the petitioner where more than seven months have passed after the evidence of the workman has become over, the petitioner board has filed such an application which is nothing but delay tactics on the part of the petitioner and, therefore, the labour court has rightly rejected the application Exh. 49. One more aspect is required to be noted that in this petition, the order under challenge is an interim order passed by the labour court below Exh. 49. This aspect has been considered by this Court in case of Cadila Health Care Ltd. versus Union of India and Others reported in 1998 (2) GLH 513. This Court has observed that under Article 226/227 of the Constitution of India, a petition is filed challenging interlocutory order where the order is not deciding the case finally, in that event, even if the interlocutory order is illegal, in absence of failure of justice and in view of the right to challenge the said order when it become final, petition against interlocutory order is not maintainable. In para 11 of the said judgment, it has been observed by this court as under :

"11. The matter is yet to be examined from another angle. From the scheme of the Act, 1958, it transpires that the application for registration of trade marks has to be disposed of expeditiously. Otherwise also, leaving apart the scheme of the Act aforesaid whether it is a proceeding before the Civil Court or Criminal Court or before this Court or even before any quasi judicial authority or administrative authority, the same has to be disposed of expeditiously. This object, as well in some of the cases the mandate of the statute, can only be achieved or attained where the Courts which are having powers of superintendence or extraordinary powers under Article 226 of the Constitution of India, do not permit the parties to stall the final adjudication of the matter by questioning the decision of the authorities with regard to interlocutory matters when the matter, if worthy, can be agitated even after final orders are passed. I consider it to be fulfil here to make reference to the decision of the Apex Court in the case of The Cooper Engineering Ltd. v. P.P. Mundhe, reported in AIR 1975 SC 1900. The apex court in this case held;

'10. In Management of Ritz Theatre (P) Ltd. v. Its Workmen (AIR 1963 SC 295), this Court was required to deal with a matter ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case, it should be held that it had given up its claim to the property or validity of the domestic enquiry. While repelling this argument, this Court made some significant observations;

'In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not, Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded as such an enquiry are

perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute....

If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that, in all such cases, no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to employer to cite additional evidence."

The contention has been raised by Mr. Majmudar that in reference pending before the labour court as well as before this Court, between the same parties, same question is required to be examined by this Court as well as the labour court and therefore, reference proceedings are required to be stayed during the pendency of the petition before this Court to avoid the multiplicity of proceedings. It is necessary to be noted that before the labour court, the Judge who has passed orders in recovery application is not taking up the reference before the labour court now. If the petitioner will lead proper evidence and convince the labour court in respect of the question that the workman concerned is not an employee of the Board and that there is no relationship of an employee and employer between the parties, then, the labour court may consider the same in light of the evidence produced by the parties to it and may pass appropriate award in accordance with law. Therefore, there is no question of multiplicity of proceedings as contended by Mr. Majmudar because the petitioner is not prevented from producing evidence before the labour court. Therefore, it cannot be presumed that the labour court will pass the award against the petitioner. The

labour court will pass the appropriate award in light of the evidence that may be produced before it. Further, it is not understandable as to why the petitioner is trying to avoid the labour court for having final adjudication of the reference.

In case of Manager, Air Control Engineering Co. Ltd. and Kanaiyalal Ghushabhai Kunvaria reported in [2000 (86) FLR 214], after considering the decision of the apex court in case of S.K. Verma v. Mahesh Chandra, reported in 1983 (47) FLR 313 (SC), has observed as under in para 6 of the judgment as under :

"6. In the matter of S.K. Verma v. Mahesh Chandra, the Apex Court while strongly disapproving the practice of raising frivolous preliminary objections at the insistence of the employer to delay and defeat the purpose of adjudication on merit has observed that, "there appears to be three preliminary objections which have become quite fashion to be raised by all employers, particularly Public Sector Corporations, whenever an industrial dispute is referred to the Tribunal for adjudication. One objection is that there is no 'industry'. The second that there is no industrial dispute and the third, that the workman is not workman. It is pity that when the Central Government in all solemnity refers an industrial dispute for adjudication, the Public Sector Corporation which is an instrument of the State, instead of welcoming the decision of the Tribunal on merits so as to absolve of any authority of being a bad employer or of victimization, etc., should admit to evade decision on merits by raising such objection and Government thereby carry the matter often times to the High Court and to the Supreme Court wasting public time and money. It is expected that public sector corporation to be model employer and nodal litigants. They are not expected to avoid adjudication or to indulge in dragging workman from Court to Court merely to vindicate not justice but some rigid technical stand taken by them."

In view of the observations made by the apex court as well as this Court as aforesaid and also considering the fact that the labour court has rightly passed the order in question and has not committed any error in rejecting an application Exh. 49, this petition is required to be rejected. Further, learned advocate

Mr. Majmudar has not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court while passing the order in question. Therefore, in my opinion, no interference is required and, therefore, there is no substance in this petition and therefore, petition is dismissed. Rule is discharged. Ad-interim relief granted earlier shall stand vacated with no order as to costs.

In view of the orders made on the main matter today, civil application No. 1476 of 2002 shall not survive. Same is therefore disposed of accordingly as not surviving with no order as to costs.

At this stage, learned advocate Mr. N.K. Majmudar appearing for the petitioner has made a prayer for extending the ad.interim relief granted earlier for some more period so as to enable the petitioner Board to approach the higher forum. The prayer made by Mr. Majmudar has been objected by Mr. Clerk, learned advocate for the respondent No.1.

I have considered the submissions made by both the learned advocates in this regard. This Court, by order dated 12th October, 2001, has stayed further proceedings of the reference. More than four months have gone and the proceedings of the reference have remained stayed. The matter before the labour court is at the stage of recording of evidence of the petitioner. Therefore, the ad.interim relief granted earlier by this Court is now not extended for the reason that the reference, if proceeded further for some time, it will certainly not cause any prejudice or adverse effect on the petitioner. The petitioner can approach the higher forum within reasonable period. Hence the prayer made by Mr. Majmudar is rejected.

21.3.2002. (H.K. Rathod, J.)

Vyas